

Executive Remuneration Inquiry
Productivity Commission
Locked Bag 2
Collins Street East
Melbourne VIC 8003
exec_remuneration@pc.gov.au

Inquiry into Executive Remuneration

The Finance Sector Union (FSU) represents 50,000 members employed in the finance sector across Australia, with the majority of these employed in the major banks. The FSU welcomes the opportunity to submit to the Inquiry on executive pay and supports initiatives to ensure responsible remuneration practices are observed throughout the finance industry and beyond.

This issue is particularly relevant to the finance sector, and the only way it can be addressed is through a review of all potential factors and a comprehensive response. We welcome the approach that the Productivity Commission has adopted to ensure that recommendations are evidence-based. FSU supports most recommendations in the Discussion Draft¹ which seek to reduce conflicts of interest, increase independence and improve disclosure. There are some recommendations we have sought clarification on, and look forward to this being addressed in the final report.

We have responded to each of the draft recommendations.

1: The Corporations Act 2001 should specify that only a general meeting of shareholders can set the maximum number of directors who may hold office at any time (within the limits in a company's constitution).

FSU supports this recommendation.

2: A new ASX listing rule should specify that all ASX300 companies have a remuneration committee of at least three members, all of whom are non-executive directors, with the chair and a majority of members being independent.

FSU supports this recommendation.

3: The ASX Corporate Governance Council's current suggestion on the composition of remuneration committees should be elevated to a 'comply or explain' recommendation which specifies that remuneration committees:

- *have at least three members*
- *be comprised of a majority of independent directors*

¹ *Executive Remuneration in Australia: Productivity Commission Discussion Draft*, Productivity Commission, September 2009.

- *be chaired by an independent director.*

FSU supports this recommendation.

4: The Corporations Act 2001 should specify that company executives identified as key management personnel and all directors (and their associates) be prohibited from voting their shares on remuneration reports and any other remuneration-related resolutions.

FSU supports this recommendation.

5: The Corporations Act 2001 should prohibit all company executives from hedging unvested equity remuneration and vested equity remuneration that is subject to holding locks.

FSU supports this recommendation.

6: The Corporations Act 2001 and relevant ASX listing rules should be amended to prohibit company executives identified as key management personnel and all directors (and their associates) from voting undirected proxies on remuneration reports and any other remuneration-related resolutions.

FSU supports this recommendation.

7: The Corporations Act 2001 should be amended to require proxy holders to cast all of their directed proxies on remuneration reports and any other remuneration-related resolutions.

FSU supports this recommendation.

8: Section 300A of the Corporations Act 2001 should be amended to specify that remuneration reports should additionally include:

- *a plain English summary statement of companies' remuneration policies*
- *actual levels of remuneration received by executives*
- *total company shareholdings of the individuals named in the report.*

Corporations should be permitted to only disclose fair valuation methodologies of equity rights for executives in the financial statements, while continuing to disclose the actual fair value for each executive in the remuneration report.

FSU supports this recommendation.

9: Section 300A of the Corporations Act 2001 should be amended to reflect that individual remuneration disclosures be confined to the key management personnel. The additional requirement for the disclosure of the top five executives should be removed.

We find it difficult to justify removing the requirement for disclosure of the top five executives. As identified in the Discussion Draft,² in most large companies the top 5 executives would be key management personnel (KMP) and therefore the additional disclosure is not required. In circumstances where an employee is able to earn more than KMP we believe this disclosure is necessary to ensure perverse outcomes of some remuneration arrangements are exposed.

The bonus payment by CBA to Chris Cuffe is one example that demonstrates the importance of remuneration disclosure. The fact that disclosure of his \$32.75 million payment was limited initially to a footnote in the annual report demonstrates the preference of organisations to limit disclosure where possible. The shareholder and community response to this significant payment demonstrates genuine interest in wanting to know about large payments to employees regardless of whether they are an executive. We believe that removing disclosure requirements in respect to the five highest-earning employees will not achieve the intended outcome of simplifying the remuneration report, but will allow instances where the board has permitted extreme payments to remain secret.

10: The ASX listing rules should require that, where an ASX300 company's remuneration committee (or board) makes use of expert advisers, those advisers be commissioned by, and their advice provided directly to, the remuneration committee or board, independent of management.

FSU supports this recommendation.

11: The ASX Corporate Governance Council should make a recommendation that companies disclose the expert advisers they have used in relation to remuneration matters, who appointed them, who they reported to and the nature of other work undertaken for the company by those advisers.

FSU supports this recommendation.

12: Institutional investors should disclose, at least on an annual basis, how they have voted on remuneration reports and any other remuneration-related issues. How this requirement is met should be at the discretion of institutions.

The FSU supports this recommendation, but seeks clarification on what type of disclosure is required. We believe at a minimum this should be equivalent to capital adequacy disclosure requirements for ADI's³ and be available on the institutional investor's website.

13: The cessation of employment trigger for taxation for equity-based payments should be removed, with the taxing point for equity or rights that qualify for deferral being at the

² *Ibid*

³ *Prudential Standard APS 330- Capital Adequacy: Public Disclosure of Prudential Information*, APRA, January 2008.

earliest of: where ownership of, and free title to, the shares or rights is transferred to the employee, or seven years after the employee acquires the shares.

FSU recognises the importance of aligning executive remuneration with longer time periods and the importance of long-term incentives. While this recommendation may remove some disincentives for equity with longer vesting periods, we have reservations that amending the tax legislation will provide yet another vehicle for executives to reduce their tax obligations. The capital gains from when the equity was issued should be assessable income for tax purposes. An interest charge should also be applied in respect to the discount provided for delaying payment of the tax liability.

14: The Australian Securities and Investments Commission should issue a public confirmation to companies that electronic voting is legally permissible without the need for constitutional amendments — as recommended in 2008 by the Parliamentary Joint Committee on Corporations and Financial Services.

The FSU supports this recommendation.

15: The Corporations Act 2001 should be amended to require that where a company's remuneration report receives a 'no' vote of 25 per cent or higher, the board be required to report back to shareholders in the subsequent remuneration report explaining how shareholder concerns were addressed and, if they have not been addressed, the reasons why.

If the company's subsequent remuneration report receives a 'no' vote above a prescribed threshold, all elected board members be required to submit for re-election (a 'two strikes' test) at either:

- *an extraordinary general meeting or*
- *the next annual general meeting.*

The FSU supports this recommendation, but we believe the second threshold should be disclosed.

If you have any questions in relation to this submission please contact Rod Masson, National Communication and Policy Manager, on (03) 9261 5330 or Keegan Hayden on (03) 9261 5342.

Yours sincerely

Leon Carter
National Secretary
6 November 2009